

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 RENE VAZQUEZ-BOTET and
7 MARCOS MORELL-CORRADA,

8 Defendants.

Criminal No. 04-160 (JAF)

9 **INSTRUCTIONS**

10 **MEMBERS OF THE JURY:**

11 **General Instructions**

12 Now that you have heard all the evidence, it is my duty to
13 instruct you on the law. A copy of these instructions will be
14 available in the jury room for you to consult if you find it
15 necessary.

16 **Duty to Find the Facts**

17 It is your duty to find the facts from all the evidence
18 admitted in this case. To those facts you must apply the law as I
19 give it to you. The determination of the law is my duty as the
20 presiding judge. It is your duty to apply the law exactly as I give
21 it to you, whether you agree with it or not. You must not be
22 influenced by any personal likes or dislikes, prejudices or
23 sympathy. That means that you must decide the case solely on the

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1 evidence before you and according to the law. You will recall that
2 you took an oath promising to do so at the beginning of the case.

3 I also instruct you that party politics and the political
4 affiliation of defendants, witnesses or contractors has no bearing
5 in the case at bar. This case is about specific charged offenses
6 and not about political parties, elections or political
7 administrations. Therefore, I instruct you not to consider party
8 politics or anybody's political affiliation in your consideration
9 of this case.

10 **Consider All Instructions**

11 In following my instructions, you must follow all of them and
12 not single out some and ignore others; they are all equally
13 important. You must not read into these instructions, or into
14 anything I may have said or done, any suggestions by me as to what
15 verdict you should return – that is a matter entirely for you to
16 decide.

17 **Burden of Proof**

18 I will first instruct you on the legal burden of proof for
19 criminal cases. Your deliberations and decisions are to be made
20 following this legal rule regarding burden of proof.

21 It is a cardinal principle of our system of justice that every
22 person accused of a crime is presumed to be innocent unless and
23 until his or her guilt is established beyond a reasonable doubt.

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1 The presumption is not a mere formality. It is a matter of the most
2 important substance.

3 The presumption of innocence alone may be sufficient to raise
4 a reasonable doubt and to require the acquittal of a defendant.
5 Defendants Vázquez-Botet and Morell-Corrada have the benefit of
6 that presumption throughout the trial, and you are not to convict
7 either defendant of a particular charge unless you are persuaded of
8 his guilt of that charge beyond a reasonable doubt.

9 The presumption of innocence until proven guilty means that
10 the burden of proof is always on the government to satisfy you that
11 the defendants are guilty of the crimes with which they are charged
12 beyond a reasonable doubt. The law does not require that the
13 government prove guilt beyond all possible doubt; proof beyond a
14 reasonable doubt is sufficient to convict. This burden never
15 shifts to the defendants. It is always the government's burden to
16 prove each of the elements of the crimes charged beyond a
17 reasonable doubt by the evidence and the reasonable inferences to
18 be drawn from that evidence. Defendants Vázquez-Botet and Morell-
19 Corrada have the right to rely upon the failure or inability of the
20 government to establish beyond a reasonable doubt any essential
21 element of a crime charged against them.

22 If, after fair and impartial consideration of all the
23 evidence, you have a reasonable doubt as to a defendant's guilt of
24 a particular crime, it is your duty to acquit that defendant of

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1 that crime. On the other hand, if after fair and impartial
2 consideration of all the evidence, you are satisfied beyond a
3 reasonable doubt of a defendant's guilt of a particular crime, you
4 should vote to convict him.

5 Defendants have the constitutional right not to testify and no
6 inference of guilt, or of anything else, may be drawn from the fact
7 that a defendant did not testify. For any of you to draw such an
8 inference would be wrong; indeed, it would be a violation of your
9 oath as jurors.

10 Remember that the law requires independent consideration of
11 each defendant and each charge in the indictment. Your decision as
12 to one defendant or one charge does not control as to the others.

13 **What is Evidence**

14 The evidence from which you are to decide what the facts are
15 consists of sworn testimony of witnesses, both on direct and cross-
16 examination, regardless of who called the witness; the exhibits
17 that have been received into evidence; and any facts to which the
18 lawyers have agreed or stipulated. A stipulation means simply that
19 the government and the defendants accept the truth of a particular
20 proposition or fact. Since there is no disagreement, there is no
21 need for evidence apart from the stipulation. You must accept the
22 stipulation as fact, even though nothing more was said about it one
23 way or the other, and give it whatever weight you choose.

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1 Although you may consider only the evidence presented in the
2 case, you are not limited to the bald statements made by the
3 witnesses when considering that evidence. In other words, you are
4 not limited solely to what you see and hear as the witnesses
5 testify. You are permitted to draw such reasonable inferences as
6 you believe are justified in light of common sense and personal
7 experience from facts that you find to have been proven.

8 **Charts, Summaries or Demonstrative Exhibits**

9 The parties asked for permission from the court to use some
10 presentations or notes which they showed to you in the courtroom
11 video system to illustrate a point. These include notes prepared
12 by counsel with additions, subtractions or statements written as we
13 went along in the course of the trial. I labeled these
14 demonstrative exhibits.

15 I caution you that these are the equivalent of information
16 written on a blackboard by a lawyer as the case progressed. Judges
17 usually allow the use of blackboards or visual aids for
18 demonstrative purposes. These presentations which I have equated
19 to a blackboard are simply the proponent's conception, its
20 contention as to what the evidence already received has
21 established. If the information posted in these various pieces of
22 paper differs in any particular with your recollection as to the
23 evidence, you will disregard these demonstrative exhibits in that
24 respect. These presentations are simply outlines which you may

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1 consider along with the underlying evidence supporting it if any.
2 If the demonstrative exhibits failed to reflect what the evidence
3 showed, then you should not use these demonstrative exhibits for
4 any purpose. I am basically asking you to use and consider them in
5 that light and not as independent evidence in and of themselves.

6 **Direct and Circumstantial Evidence**

7 There are two kinds of evidence: direct and circumstantial.
8 Direct evidence is direct proof of a fact, such as testimony of an
9 eyewitness that the witness saw something. Circumstantial evidence
10 is indirect evidence, that is proof of a fact or facts from which
11 you could draw the inference, by reason and common sense, that
12 another fact exists, even though it has not been proven directly.
13 You are entitled to consider both kinds of evidence. The law
14 permits you to give equal weight to both, but it is for you to
15 decide how much weight to give to any evidence.

16 **Credibility of Witnesses**

17 Whether the government has sustained its burden of proof does
18 not depend upon the number of witnesses it has called or upon the
19 number of exhibits it has offered, but instead upon the nature and
20 quality of the evidence presented. You do not have to accept the
21 testimony of any witness if you find the witness not credible. You
22 must decide which witnesses to believe and which facts are true. To
23 do this, you must look at all the evidence, drawing upon your
24 common sense and personal experience.

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1 You may want to take into consideration such factors as the
2 witnesses' conduct and demeanor while testifying; their apparent
3 fairness or any bias they may have displayed; any interest you may
4 discern that they may have in the outcome of the case; any
5 prejudice they may have shown; their opportunities for seeing and
6 knowing the things about which they have testified; the
7 reasonableness or unreasonableness of the events that they have
8 related to you in their testimony; and any other facts or
9 circumstances disclosed by the evidence that tend to corroborate or
10 contradict their versions of the events.

11 **Accomplices, Cooperating Witnesses, and Plea Agreements**

12 The testimony of an accomplice or of anyone who provides
13 evidence against a defendant for personal advantage under a plea
14 agreement or under a promise not to be prosecuted must always be
15 examined and weighed by the jury with greater care and caution than
16 the testimony of ordinary witnesses.

17 Plea agreements that have a cooperation clause and that result
18 from plea bargaining, as it is called, have been approved as lawful
19 and proper, and are expressly provided for in the Federal Rules of
20 Criminal Procedure. You, the jury, must decide whether the
21 witnesses' testimony has been affected by any of those
22 circumstances or by the fact that some may have been convicted of
23 felony offenses previously. You may also consider what the witness
24 expects his final sentence to be. So, while a witness of that kind

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1 may be entirely truthful when testifying, such testimony is always
2 to be received with caution and weighed with great care because
3 they may have reason to make up stories or exaggerate what others
4 did in order to help themselves.

5 You should never convict a defendant upon the unsupported
6 testimony of such a witness or witnesses unless you believe that
7 testimony beyond a reasonable doubt.

8 Regarding the punishment that cooperating defendants receive
9 after their cooperation and at the time of their sentence, or
10 regarding any reduction in punishment that sentenced defendants
11 received or expect to receive, I instruct you as follows. The
12 Federal Criminal Code and the Advisory Sentencing Guidelines
13 promulgated by the U.S. Sentencing Commission contain all the rules
14 that a judge must follow in determining if any benefit is available
15 to the cooperating defendants. First, the government must file a
16 motion certifying the nature and quality of the cooperation. If
17 that is done, then the court has the discretion to adjust any
18 punishment downward accordingly. The final sentence of any
19 cooperating individual is for the judge to decide.

20 **Impeachment of Witness Testimony by Prior Conviction**

21 You may have heard that two cooperating witnesses have been
22 convicted of a crime. You may consider that evidence, together with
23 other pertinent evidence, in deciding how much weight to give to
24 those witnesses' testimony.

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1 **Impeachment by Prior Inconsistent Statement**

2 In the course of this trial you have heard evidence that
3 before testifying at this trial, certain witnesses made a statement
4 concerning the same subject matter as his or her testimony in this
5 trial. You may consider that earlier statement to help you decide
6 how much of the witness' testimony to believe. If you find that the
7 prior statement was not consistent with the witness' testimony at
8 this trial, then you should decide whether that affects the
9 believability of the witness' testimony at this trial.

10 **Cautionary and Limiting Instructions**
11 **as to Particular Kinds of Evidence**

12 A particular item of evidence is sometimes received for a
13 limited purpose only. That is, it can be used by you only for one
14 particular purpose, and not for any other purpose. I have told you
15 when that occurred, and instructed you on the purposes for which
16 the item can and cannot be used.

17 One of these instances is the grand jury testimony of Marcos
18 Morell-Corrada and the testimony of Special Agent Iván Vitusek as
19 it relates to his interviews of codefendant Marcos Morell-Corrada.
20 You will remember that I specifically instructed you about that,
21 and I will repeat the instruction now.

22 The testimony of Agent Iván Vitusek, as it relates to his
23 interview of Marcos Morell-Corrada and Morell-Corrada's testimony
24 before the Grand Jury, has been received solely in reference to the

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1 charges against Morell-Corrada. Count Fourteen only charges Marcos
2 Morell-Corrada with obstruction of justice regarding his own
3 testimony by voluntary appearance before the Grand Jury. I must
4 emphasize that Count Fourteen does not charge René Vázquez-Botet
5 and does not include any allegation against him. In other words,
6 René Vázquez-Botet is not charged in Count Fourteen at all.

7 Therefore, the evidence that Special Agent Vitusek has
8 provided regarding his office interviews of Marcos Morell-Corrada
9 is admissible only against Morell-Corrada and not against Vázquez-
10 Botet.

11 The same instruction applies to Marcos Morell-Corrada's Grand
12 Jury testimony that you heard. The grand jury testimony is
13 admissible only against Morell-Corrada, but it may be considered in
14 reference to all charges in the indictment against Morell-Corrada.
15 Such Grand Jury testimony is not admissible against René Vázquez-
16 Botet and it would be a violation of this instruction to consider
17 such Grand Jury testimony against Vázquez-Botet.

18 Once again, the admission into evidence of the office
19 interviews and the Grand Jury testimony can be considered by you
20 only in reference to codefendant Marcos Morell-Corrada.

21 **What is Not Evidence**

22 Certain things are not evidence. I will list them for you:

23 (1) Opening statements and closing arguments by prosecutors
24 and defense lawyers are not evidence. The prosecutors and defense

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1 lawyers are not witnesses. What they say in their opening
2 statements, closing arguments, and at other times is intended to
3 help you interpret the evidence, but it is not evidence. If the
4 facts as you remember them from the evidence differ from the way
5 the lawyers have stated them, your memory of them controls.

6 (2) Questions and objections are not evidence. Trial
7 attorneys have a duty to their clients to object when they believe
8 a question is improper under the rules of evidence. You should not
9 be influenced by the objection or by my ruling on it.

10 (3) Anything that I have excluded from evidence or ordered
11 stricken and instructed you to disregard is not evidence. You must
12 not consider such items.

13 (4) Anything you may have seen or heard when the court was
14 not in session is not evidence. You are to decide the case solely
15 on the evidence received at trial.

16 (5) The indictment is not evidence. This case, like most
17 criminal cases, began with an indictment. You will have that
18 indictment before you in the course of your deliberations in the
19 jury room. That indictment was returned by a grand jury, which
20 heard only the government's side of the case. I caution you, as I
21 have before, that the fact that the defendants have had an
22 indictment filed against them is no evidence whatsoever of their
23 guilt. The indictment is simply an accusation. It is the means,-

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1 the document by which the allegations and charges of the government
2 are brought before this court. The indictment proves nothing.

3 Stipulations

4 The evidence in this case includes facts to which the lawyers
5 have agreed or stipulated. The evidence also includes stipulations
6 or agreements as to what the testimony of certain witnesses would
7 be, if they appeared before you in this courtroom. A stipulation
8 means simply that the government and one or both defendants accept
9 the truth of a particular proposition or facts. Since there is no
10 disagreement, there is no need for evidence apart from the
11 stipulation. If the parties stipulate to a proposition or fact
12 during the course of this trial, you must accept the stipulation as
13 facts to be given whatever weight you choose.

14 Use of Tapes and Transcripts

15 At certain points during the trial, you heard testimony that
16 was recorded. This is proper evidence for you to consider. In order
17 to help you, I allowed you to have a transcript to read along as
18 the tape was played. The transcript of what was said on the taped
19 hearing was prepared by a court reporter. If you believe at any
20 point that the transcript says something different from what you
21 heard on the tape, remember that the tape is the evidence presented
22 by the parties, even though the transcript is the official record.
23 Any time there is a variation between the tape and the transcript,
24 you must be guided solely by what you hear on the tape and not by

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what you read in the transcript. This is especially important if a translator intervened in placing the Spanish testimony into a record kept in English.

Admonishment of Attorneys

It is the duty of the court to admonish an attorney or prosecutor who, out of intensity or fervor for his cause, does something which is not in keeping with the rules of evidence or procedure.

You are not to draw any inference against the side to whom any admonition by the court was addressed during the trial of this case.

Outline of the Indictment

The Indictment charges the two defendants, René Vázquez-Botet and Marcos Morell-Corrada, in fourteen counts. The following is a table of defendants with a reference to the counts of the Indictment where they appear charged.

Defendant	Counts
[1] RENE VAZQUEZ-BOTET	1,2,3,4,5,6,7,8
[2] MARCOS MORELL-CORRADA	1,2,3,4,5,9,10,11,12,13,14

Nature of Indictment; Presumption of Innocence

This criminal case has been brought by the United States government. I may sometimes refer to the government as the prosecution. The government is represented at this trial by two Trial Attorneys from the Public Integrity Section of the United

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1 States Department of Justice: Mary K. Butler and Matthew C.
2 Solomon. There are two defendants in this case: René Vázquez-Botet
3 and Marcos Morell-Corrada. Defendant Vázquez-Botet is represented
4 by his lawyers, Howard M. Srebnick and Edgar R. Vega-Pabón.
5 Defendant Morell-Corrada is represented by his lawyers, Francisco
6 Rebollo-Casaldue and Octavio M. Rivera-Bujosa.

7 The government has charged the defendants with violations of
8 federal criminal law. Both defendants have been charged with
9 (1) conspiracy to (a) commit extortion, (b) launder money, and
10 (c) use facilities in and travel in interstate and foreign commerce
11 in furtherance of a bribery scheme; (2) interference with commerce
12 by extortion induced under color of official right and by economic
13 fear; and (3) participation in a fraud scheme to deprive the
14 Commonwealth of Puerto Rico of income tax payments. In addition,
15 defendant Morell-Corrada is also charged with obstruction of
16 justice.

17 The charges against the defendants are contained in the
18 indictment. The indictment is simply the description of the charges
19 against the defendants; it is not evidence of anything. Both
20 defendants have pleaded not guilty to the charges and deny
21 committing the crimes. Both defendants are presumed innocent and
22 may not be found guilty by you unless all of you unanimously find
23 that the government has proven their guilt beyond a reasonable
24 doubt.

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1 Defendants Vázquez-Botet and Morell-Corrada are being tried
2 together because the government has charged that they acted
3 together in committing the following crimes involving the
4 Superaqueduct construction project in Puerto Rico: (1) conspiracy
5 to commit three offenses: (a) extortion induced by wrongful use of
6 fear of economic harm and under color of official right, (b) money
7 laundering related to the extortion payments, and (c) use of
8 facilities in and travel in interstate and foreign commerce in
9 furtherance of a bribery and undue influence scheme; and
10 (2) interference with commerce by extortion induced under color of
11 official right and by economic fear involving each of four
12 contractors.

13 But you will have to give separate consideration to the case
14 against each defendant. Do not think of the defendants as a pair.

15 Also, each charge, and the evidence pertaining to it, should
16 be considered separately and individually. The fact that you may
17 find any one or both of the defendants guilty or not of any of the
18 offenses charged should not affect your verdict as to any other
19 offense or any other defendant.

20 The question of punishment should never be considered by the
21 jury in any way in deciding the case. If a defendant is convicted,
22 the matter of punishment is for the judge alone to determine later.

23 Lastly, remember that Count Fourteen only charges codefendant
24 Marcos Morell-Corrada.

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1 **Introductory Overview of Elements of Crime**

2 In order to help you evaluate the evidence, I will now give
3 you a brief summary of the elements of the crimes charged, each of
4 which the government must prove beyond a reasonable doubt to make
5 its case.

6 In Count One of the indictment, the government has charged
7 defendants Vázquez-Botet and Morell-Corrada with conspiring to
8 commit crimes of extortion, money laundering, and use facilities in
9 and travel in interstate and foreign commerce in furtherance of a
10 bribery and undue influence scheme in violation of § 371 of the
11 United States Code, Title 18. To convict one or both defendants of
12 the conspiracy charge, you must find that each defendant agreed
13 with one another and/or others to commit one or more of the
14 underlying crimes and that one of the conspirators took an
15 affirmative step in furtherance of the conspiracy.

16 In Counts Two through Five of the indictment, the government
17 has charged defendants Vázquez-Botet and Morell-Corrada with
18 interference with commerce by extortion induced under color of
19 official right and by economic fear in violation of §§ 1951 and 2
20 of the United States Code, Title 18, involving four contractors. To
21 convict one or both defendants of the extortion charge, you must
22 find that the defendants knowingly and willfully obtained property
23 from another, that the defendants did so by means of extortion,
24 that the defendants knew that those they obtained property from

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1 parted with the property because of the extortion, and that the
2 extortion affected commerce.

3 In Counts Six through Eight of the indictment, the government
4 has charged defendant Vázquez-Botet with a fraud scheme to deprive
5 the Commonwealth of Puerto Rico of income tax payments in violation
6 of §§ 1341, 1343, and 2 of the United States Code, Title 18. To
7 convict defendant Vázquez-Botet of this crime, you must find that
8 he engaged in a scheme to deprive the Commonwealth of Puerto Rico
9 of income tax payments, that he participated in the scheme
10 knowingly and willfully with the intent to defraud or to obtain
11 money or property by means of false or fraudulent pretenses, and
12 that the United States mails or interstate or foreign wire
13 communications were used in furtherance of the scheme.

14 In Counts Nine through Thirteen of the indictment, the
15 government has charged defendant Morell-Corrada with a fraud scheme
16 to deprive the Commonwealth of Puerto Rico of income tax payments
17 in violation of §§ 1341, 1343, and 2 of the United States Code,
18 Title 18.

19 To convict defendant Morell-Corrada of this crime, you must
20 find that he engaged in a scheme to deprive the Commonwealth of
21 Puerto Rico of income tax payments, that he participated in the
22 scheme knowingly and willfully with the intent to defraud or to
23 obtain money or property by means of false or fraudulent pretenses,

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1 and that the United States mails or interstate or foreign wire
2 communications were used in furtherance of the scheme.

3 Finally, in Count Fourteen, the government has only charged
4 defendant Morell-Corrada with obstructing the grand jury's
5 investigation of this case by providing false testimony and
6 information to the grand jury and to federal investigators, in
7 violation of § 1503(a) of the United States Code, Title 18. To
8 convict defendant Morell-Corrada of this crime, you must find that
9 there was a proceeding pending before a grand jury of this court,
10 that the defendant knew of the proceeding, and that he knowingly
11 and corruptly endeavored to influence, obstruct, or impede the due
12 administration of justice in that grand jury proceeding.

13 You should understand, however, that what I have just given
14 you is only a preliminary outline. I will now give you specific
15 instructions count-per-count, starting with Count One.

16 **Count One**

17 **Conspiracy to Commit Extortion, Launder Money, and**
18 **Use Facilities in and Travel in Interstate and Foreign**
19 **Commerce in Furtherance of a Bribery Scheme,**
20 **in Violation of 18 U.S.C. § 371**

21 Count One charges the Defendants,

22 **[1] RENE VAZQUEZ-BOTET and**

23 **[2] MARCOS MORELL-CORRADA,**

24 of, among other things, conspiring to commit several federal crimes
25 in violation of § 371 of the United States Code, Title 18.

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1 Specifically, both defendants Vázquez-Botet and Morell-Corrada are
2 charged with conspiring to (a) commit extortion, (b) launder money,
3 and (c) use facilities in and travel in interstate and foreign
4 commerce in furtherance of a bribery scheme. It is against federal
5 law to conspire with someone to commit any of these crimes.

6 For you to find defendants Vázquez-Botet and/or Morell-Corrada
7 guilty of conspiracy, you must be convinced that the government has
8 proven each of the following things beyond a reasonable doubt:

9 *First*, that the agreement specified in the indictment, and not
10 some other agreement or agreements, existed between at least two
11 people to commit at least one of the crimes charged in the
12 indictment, that is, (a) extortion, (b) money laundering, or
13 (c) the use of facilities in and travel in interstate and foreign
14 commerce in furtherance of a bribery scheme;

15 *Second*, that the charged defendants willfully joined in that
16 agreement; and

17 *Third*, that one of the conspirators committed an overt act in
18 an effort to further the purpose of the conspiracy.

19 A conspiracy is an agreement, spoken or unspoken. The
20 conspiracy does not have to be a formal agreement or plan in which
21 everyone involved sat down together and worked out all the details.
22 But the government must prove beyond a reasonable doubt that those
23 who were involved shared a general understanding about the crime.
24 Mere similarity of conduct among various people or the fact that

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1 they may have associated with each other or discussed common aims
2 and interests does not necessarily establish proof of the existence
3 of a conspiracy, but you may consider such factors.

4 To act "willfully" means voluntarily and intelligently and
5 with the specific intent that the underlying crime be
6 committed—that is to say, with bad purpose, either to disobey or
7 disregard the law—not to act by ignorance, accident, or mistake.
8 The government must prove two types of intent beyond a reasonable
9 doubt before a particular defendant can be said to have willfully
10 joined the conspiracy: an intent to agree and an intent, whether
11 reasonable or not, that the underlying crime be committed. Mere
12 presence at the scene of a crime is not alone enough, but you may
13 consider it among other factors. Intent may be inferred from the
14 surrounding circumstances.

15 Proof that defendants Vázquez-Botet and/or Morell-Corrada
16 willfully joined in the agreement must be based upon evidence of
17 their own words and/or actions. You need not find that either
18 defendant agreed specifically to or knew about all the details of
19 the crime or knew every other co-conspirator, or that he
20 participated in each act of the agreement or played a major role.
21 But the government must prove beyond a reasonable doubt that they
22 knew the essential features and general aims of the venture. Even
23 if defendants Vázquez-Botet and/or Morell-Corrada were not part of
24 the agreement at the very start, they can be found guilty of

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1 conspiracy if the government proves that each of them willfully
2 joined the agreement later. On the other hand, a person who has no
3 knowledge of a conspiracy but simply happens to act in a way that
4 furthers some object or purpose of the conspiracy does not thereby
5 become a conspirator.

6 An "overt act" is any act knowingly committed by one or more
7 of the conspirators in an effort to accomplish some purpose of the
8 conspiracy. Only one overt act has to be proven. The government is
9 not required to prove that defendants Vázquez-Botet and/or Morell-
10 Corrada personally committed or knew about the overt act. It is
11 sufficient if one conspirator committed one overt act at some time
12 during the period of the conspiracy. The government does not have
13 to prove that the conspiracy succeeded or was achieved. The crime
14 of conspiracy is complete upon the agreement to commit the
15 underlying crime and the commission of one overt act.

16 **Multiple Object Conspiracy**

17 With regard to the alleged conspiracy, the indictment charges
18 that the defendants conspired to commit (a) extortion, (b) money
19 laundering, and (c) use facilities in and travel in interstate and
20 foreign commerce in furtherance of a bribery scheme. It is charged,
21 in other words, that the defendants conspired to commit three
22 separate substantive crimes or offenses.

23 In such a case, it is not necessary for the government to
24 prove that the defendants willfully conspired to commit all three

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1 of those substantive offenses. It would be sufficient if the
2 government proves, beyond a reasonable doubt, that the defendant
3 willfully conspired with someone to commit one of those offenses;
4 but, in that event, in order to return a verdict of guilty, you
5 must unanimously agree upon which of the three offenses the
6 defendant conspired to commit.

7 **Interference With Commerce by Extortion Induced Under**
8 **Color of Official Right and by Economic Fear**
9 **in Violation of 18 U.S.C. §§ 1951 and 2**

10 One of the purposes or objects of the conspiracy that
11 Defendants Vázquez-Botet and Morell-Corrada are charged with in
12 Count One is conspiring to commit extortion in at least one of two
13 ways in violation of § 1951(2) of the United States Code, Title 18.

14 For you to find defendants Vázquez-Botet and/or Morell-Corrada
15 guilty of the crime of conspiring to obstruct, delay, or affect
16 commerce by committing extortion as charged in Count One of the
17 indictment, you must be convinced that the government has proven
18 each of the following elements beyond a reasonable doubt:

19 (1) That the defendants knowingly and willfully conspired and
20 agreed to obtain property or money from the local contractors;

21 (2) that the defendants conspired and agreed to do so by
22 wrongful use of fear or under color of official right;

23 (3) that the defendants conspired and agreed to have the local
24 contractors or their employees part with the property or the money
25 because of the extortion; and

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1 (4) that the extortion affected commerce.

2 It is not necessary for you to find that the defendants knew
3 or intended that their actions would affect commerce. It is only
4 necessary that the natural consequences of the acts committed by
5 the defendants as charged in the indictment would affect commerce
6 in any way or degree.

7 The term "commerce" means commerce between any point in a
8 state or Commonwealth of the United States and any point outside
9 the state or Commonwealth.

10 "Extortion" means the obtaining of property from another with
11 his consent, induced by wrongful use of actual or threatened force,
12 violence or fear, or under color of official right. The word
13 "wrongful" implies and requires that the government prove that the
14 defendant did not have a claim of right to the property or money
15 received, and that the defendant knew that he was not legally
16 entitled to the property or money obtained.

17 Here, the government has charged both that the defendants
18 committed extortion through fear of economic loss or under color of
19 official right. You must find beyond a reasonable doubt that the
20 defendant committed only one kind of extortion. Thus, an individual
21 commits extortion if he obtains property from another, with the
22 other's consent, either through fear of economic loss or under
23 color of official right.

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1 "Fear of economic loss" includes the possibility of lost
2 business opportunities. To establish extortion through fear of
3 economic loss, the government must show that the victim believed
4 that economic loss would result from his or her failure to comply
5 with the alleged extortionist's terms, and that the circumstances
6 rendered that fear reasonable. Moreover, the mere fact that the
7 victim approached the extorter first does not mean that extortion
8 did not occur.

9 Also, there is no requirement that the extorter explicitly
10 threatened the victim.

11 Alternatively, to prove extortion under color of official
12 right, the government need only show that a public official (José
13 Granados-Navedo) has obtained a payment to which he was not
14 entitled, knowing that the payment was made in return for official
15 acts. It is irrelevant whether the official had actual authority
16 over the end result. It is enough that the payments were made by
17 persons who reasonably believed that the official, José Granados-
18 Navedo, had the power to facilitate the sought-after result.
19 Moreover, the public official need not have solicited the money or
20 property first.

21 **Money Laundering, in Violation of 18 U.S.C.**
22 **§§ 1956(a) (1) (A) (1) & (B) (1)**

23 Defendants Vázquez-Botet and Morell-Corrada are charged with
24 conspiring to commit three objects, or crimes, in Count One of the

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1 indictment. One of those objects is to launder money in violation
2 of § 1956 of the United States Code, Title 18.

3 For you to find defendants Vázquez-Botet and/or Morell-Corrada
4 guilty of conspiracy to launder money, you must be convinced that
5 the government has proven each of the following things beyond a
6 reasonable doubt:

7 (1) that the defendants conspired or agreed with others to
8 enter into a financial transaction or transactions, on or about the
9 dates alleged, with a financial institution engaged in interstate
10 commerce;

11 (2) that the transaction involved the use of proceeds of
12 unlawful activities, specifically, proceeds of a scheme whereby the
13 defendants and others obtained money from the local contractors;

14 (3) that the defendants conspired or agreed knowing that these
15 were the proceeds of some kind of crime that amounts to a state or
16 federal felony; and

17 (4) that the defendants conspired or agreed with others to
18 enter into a transaction or transactions with the intent to promote
19 the carrying on of a specified unlawful activity or that the
20 defendants knew that the transaction or transactions were designed
21 in whole or in part to conceal or disguise the true nature,
22 location, source, ownership, or control of the proceeds of unlawful
23 activity.

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1 A withdrawal, deposit, or transfer of funds from a bank is a
2 financial transaction.

3 "Proceeds" means any property or any interest in property that
4 someone acquires or retains as a result of the commission of
5 unlawful activity.

6 "Promote" means to further, to help carry out, or to make
7 easier.

8 "To conceal" means to hide, secrete or withhold from the
9 knowledge of others.

10 Knowledge may not ordinarily be proven directly because there
11 is no way of directly scrutinizing the workings of the human mind.
12 In determining what a defendant knew or intended at a particular
13 time, you may consider against that defendant any statements made
14 by him or acts done or not done by him and all other facts and
15 circumstances received in evidence that may aid in your
16 determination of the defendant's knowledge or intent. You may
17 infer, but you are certainly not required to infer, that a person
18 intends the natural and probable consequences of acts done or
19 knowingly not done. It is entirely up to you, however, to decide
20 what facts are proven by the evidence received during this trial.

21 **Travel Act, in Violation of 18 U.S.C. § 1952**

22 Defendants Vázquez-Botet and Morell-Corrada are charged with
23 conspiring to commit three objects, or crimes, in Count One of the
24 indictment. One of those objects is to cause persons to travel in

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1 interstate and foreign commerce to promote bribery, in violation of
2 Puerto Rico law and § 1952 of the United States Code, Title 18.

3 Let me explain in general terms what bribery is. The
4 following Travel Act instructions make reference to that type of
5 offense.

6 "Bribery" ("soborno") is the offering, giving, receiving or
7 soliciting of something of value for the purpose of influencing the
8 action of an official in the discharge of his or her public or
9 legal duties. It is also the corrupt tendering or receiving of a
10 price for official action. It is also defined as the receiving or
11 offering any undue reward by or to any person concerned with public
12 office to influence his or her behavior in office. It includes any
13 direct or indirect action to give, promise or offer anything of
14 value to a public official or to a witness, or an official's or
15 witness' solicitation of something of value.

16 For you to find defendants Vázquez-Botet and/or Morell-Corrada
17 guilty of conspiracy to cause persons to travel in interstate and
18 foreign commerce to promote bribery, you must be convinced that the
19 government has proven each of the following things beyond a
20 reasonable doubt:

21 (1) that the defendants conspired or agreed to travel or cause
22 someone else to travel in foreign commerce or use an interstate
23 facility;

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1 (2) that the defendants conspired or agreed to do so with the
2 intent to promote, manage, establish, carry on, or facilitate an
3 unlawful activity, here, a violation of Puerto Rico law regarding
4 criminal bribery and the criminal use of undue influence under
5 Puerto Rico's Penal Code of 1974, as amended, 33 L.P.R.A. §§ 4360-
6 4364.

7 (3) that the defendants conspired or agreed to perform or
8 attempted to perform acts in furtherance of the unlawful activity.

9 Regarding bribery in violation of Puerto Rico criminal laws,
10 the government must prove beyond a reasonable doubt that the
11 defendants joined in an agreement in which:

12 *One:* An alleged member of the charged conspiracy, José
13 Granados-Navedo, demanded, sought or received something of value as
14 described in the Indictment;

15 *Two:* José Granados-Navedo was, at that time, a public official
16 of the Government of Puerto Rico, or was acting on behalf of the
17 Government of Puerto Rico through its Legislative Branch, and

18 *Three:* José Granados-Navedo agreed to demand, seek or receive
19 an item of value corruptly in return for being influenced in the
20 performance of an official act.

21 Regarding the use of undue influence, the government must
22 prove beyond a reasonable doubt an agreement that:

23 *One:* The defendants, René Vázquez-Botet and/or Marcos Morell-
24 Corrada, obtained or attempted to obtain any benefit from the

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Superaqueduct subcontractors by claiming or pretending that they were or either of them was in a position to influence the conduct of a public officer or employee in the exercise of his duties.

Counts Two through Five

**Interference with Commerce by Extortion Induced Under
Color of Official Right and by Economic Fear,
in Violation of 18 U.S.C. §§ 1951 and 2**

Counts Two through Five charge Defendants,

[1] RENE VAZQUEZ-BOTET and

[2] MARCOS MORELL-CORRADA,

with violating §§ 1951 and 2 of the United States Code, Title 18.

Section 1951 of the United States Code makes it illegal to obstruct, delay, or affect commerce by committing extortion. The defendants are charged with committing extortion of four different contractors in two ways:

(1) obtaining property from another, with his consent, induced by fear of economic harm, and

(2) obtaining property from another, with his consent, by a public official, knowing that the payment was made in return for official acts.

As I will explain further, section 2 makes it an offense to aid and abet the commission of the crime of extortion.

You must consider the evidence against each defendant and for each count separately. To convict a defendant of any of these four

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1 counts, you must find that each defendant committed each crime of
2 extortion. You need only find that the defendant committed
3 extortion in one of the ways charged, but you must reach unanimous
4 agreement as to the way in which the extortion was committed.

5 For you to find defendants René Vázquez-Botet and Marcos
6 Morell-Corrada guilty of this crime, you must be convinced that the
7 government has proven each of the following things beyond a
8 reasonable doubt:

9 *First*, that defendants René Vázquez-Botet and Marcos Morell-
10 Corrada knowingly and willfully obtained money or property from the
11 four contractors, Feliciano, Carrero, Longo, and Carmona;

12 *Second*, that defendants René Vázquez-Botet and Marcos Morell-
13 Corrada did so by means of extortion;

14 *Third*, That defendants René Vázquez-Botet and Marcos Morell-
15 Corrada knew that the extorted contractors or their employees
16 parted with the property because of the extortion; and

17 *Fourth*, that the extortion affected commerce.

18 It is not necessary for you to find that defendants René
19 Vázquez-Botet and Marcos Morell-Corrada knew or intended that their
20 actions would affect commerce. It is only necessary that the
21 natural consequences of the acts committed by defendants Vázquez-
22 Botet and Morell-Corrada as charged in the indictment would affect
23 commerce in any way or degree. The term "commerce" means commerce

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1 between any point in a state and any point outside the state,
2 including Puerto Rico.

3 "Extortion" means the obtaining of property from another with
4 his consent, induced by wrongful use of actual or threatened force,
5 violence or fear, or under color of official right. The word
6 "wrongful" implies and requires that the government prove that the
7 defendant did not have a claim of right to the property or money
8 received, and that the defendant knew that he was not legally
9 entitled to the property or money obtained.

10 Here, the government has charged both that the defendants
11 committed extortion through fear of economic loss or under color of
12 official right. You must find beyond a reasonable doubt that the
13 defendant committed only one kind of extortion. Thus, an individual
14 commits extortion if he obtains property from another, with the
15 other's consent, either through fear of economic loss or under
16 color of official right.

17 "Fear of economic loss" includes the possibility of lost
18 business opportunities. To establish extortion through fear of
19 economic loss, the government must show that the victim believed
20 that economic loss would result from his or her failure to comply
21 with the alleged extortionist's terms, and that the circumstances
22 rendered that fear reasonable. Moreover, the mere fact that the
23 victim approached the extorter first does not mean that extortion
24 did not occur.

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1 Also, there is no requirement that the extorter explicitly
2 threatened the victim.

3 Alternatively, to prove extortion under color of official
4 right, the government need only show that a public official (José
5 Granados-Navedo) has obtained a payment to which he was not
6 entitled, knowing that the payment was made in return for official
7 acts. It is irrelevant whether the official had actual authority
8 over the end result. It is enough that the payments were made by
9 persons who reasonably believed that the official, José Granados-
10 Navedo, had the power to facilitate the sought-after result.
11 Moreover, the public official need not have solicited the money or
12 property first.

13 **Aiding and Abetting the Commission of Offenses**
14 **(18 U.S.C. § 2 charged in Counts Two through Thirteen)**

15 To "aid and abet" means intentionally to help someone else
16 commit a crime. To establish aiding and abetting, the government
17 must prove beyond a reasonable doubt that,

18 (1) someone else committed the charged crime, and

19 (2) the defendant willfully associated himself in some way
20 with the crime and willfully participated in it as he would in
21 something he wished to bring about.

22 This means that the government must prove that the defendant
23 consciously shared the other person's knowledge of the underlying
24 criminal act and intended to help him. The defendant need not

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1 perform the underlying criminal act, be present when it is
2 performed, or be aware of the details of its execution to be guilty
3 of aiding and abetting. But a general suspicion that an unlawful
4 act may occur or that something criminal is happening is not
5 enough. Mere presence at the scene of a crime and knowledge that a
6 crime is being committed are not sufficient to establish aiding and
7 abetting.

8 An act is done "willfully" if done voluntarily and
9 intentionally with the intent that something the law forbids be
10 done, that is to say, with bad purpose, either to disobey or
11 disregard the law.

12 **Pinkerton Charge**

13 There is another method by which you may evaluate whether to
14 find the defendants guilty of the substantive extortion charges in
15 the indictment.

16 If, in light of my instructions, you find beyond a reasonable
17 doubt that the defendants are guilty on the conspiracy count, Count
18 One, then you may also, but you are not required to, find each
19 defendant guilty of the substantive crimes charged in Counts Two
20 through Five, provided you find beyond a reasonable doubt each of
21 the following elements:

22 *First*, that someone committed the substantive crime charged in
23 Counts Two through Five;

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1 *Second*, that the person you find actually committed the
2 substantive crimes was a member of the conspiracy of which you
3 found the defendant was a member;

4 *Third*, that this co-conspirator committed the substantive
5 crime in furtherance of the conspiracy;

6 *Fourth*, that the defendant was a member of this conspiracy at
7 the time the substantive crime was committed and had not withdrawn
8 from it; and

9 *Fifth*, that the defendant could reasonably have foreseen that
10 one or more of his co-conspirators might commit the substantive
11 crime.

12 If you find all five of these elements to exist beyond a
13 reasonable doubt, then you may find the defendants guilty of the
14 substantive crime charged, even though they did not personally
15 participate in the acts constituting the crime or did not have
16 actual knowledge of them.

17 If, however, you are not satisfied as to the existence of any
18 one of these five elements, then you may not find the defendants
19 guilty of the particular substantive crime unless the government
20 proves beyond a reasonable doubt that the defendants personally
21 committed that substantive crime, or aided and abetted its
22 commission.

23 **Counts Six through Eight**

24 **Fraud Scheme to Deprive the Commonwealth of Puerto Rico of**

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**Income Tax Payments, in Violation of 18 U.S.C. §§ 1341,
1343, and 2 (Defendant Vázquez-Botet)**

Counts Six through Eight charge Defendant,

[1] RENE VAZQUEZ-BOTET,

with engaging in a fraud scheme to deprive the Commonwealth of Puerto Rico of income tax payments.

For you to find defendant Vázquez-Botet guilty of this scheme, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, a scheme, substantially as charged in the indictment, to defraud the Commonwealth of Puerto Rico and to deprive the Commonwealth of property in the form of income tax payments and to obtain these tax payments instead for himself;

Second, defendant Vázquez-Botet's knowing and willful participation in this scheme with the intent to defraud or to obtain money or property by means of false or fraudulent representations, pretenses or promises; and

Third, the use of the United States mails or the use of interstate or foreign wire communications, on or about the dates charged, in furtherance of this scheme.

A scheme includes any plan, pattern, or course of action. The term "defraud" means to deprive another of something of value by means of deception or cheating. A scheme to defraud is ordinarily accompanied by a desire or purpose to bring about some gain or

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1 benefit to oneself or some other person or by a desire or purpose
2 to cause some loss to some person.

3 The term "false or fraudulent pretenses" means any false
4 statements or assertions that concern a material aspect of the
5 matter in question, that were either known to be untrue when made
6 or made with reckless indifference to their truth and that were
7 made with the intent to defraud. They include actual, direct false
8 statements as well as half-truths and the knowing concealment of
9 facts.

10 A material fact or matter is one that has a natural tendency
11 to influence or be capable of influencing the decision maker to
12 whom it was addressed.

13 Defendant Vázquez-Botet acted knowingly if he was conscious
14 and aware of his actions, realized what he was doing or what was
15 happening around him, and did not act because of ignorance, mistake
16 or accident.

17 An act or failure to act is willful if done voluntarily and
18 intentionally and with the specific intent to do something the law
19 forbids, or with specific intent to fail to do something the law
20 requires to be done; that is to say, with bad purpose either to
21 disobey or to disregard the law.

22 Thus, if defendant Vázquez-Botet acted in good faith, he
23 cannot be guilty of the crime. The burden to prove intent, as with
24 all other elements of the crime, rests with the government.

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1 To act with an intent to defraud means to act willfully and
2 with the specific intent to deceive or cheat for the purpose of
3 either causing some financial loss to another or bringing about
4 some financial gain to oneself.

5 Intent or knowledge may not ordinarily be proven directly
6 because there is no way of directly scrutinizing the workings of
7 the human mind. In determining what defendant Vázquez-Botet knew or
8 intended at a particular time, you may consider any statements made
9 or acts done or not done by him and all other facts and
10 circumstances received in evidence that may aid in your
11 determination of his knowledge or intent. You may infer, but you
12 certainly are not required to infer, that a person intends the
13 natural and probable consequences of acts knowingly done or
14 knowingly not done. It is entirely up to you, however, to decide
15 what facts are proven by the evidence received during this trial.

16 It is not necessary that the government prove all of the
17 details alleged in the indictment concerning the precise nature and
18 purpose of the scheme or that the material transmitted by mail or
19 wire communication was itself false or fraudulent or that the
20 alleged scheme actually succeeded in defrauding anyone or that the
21 use of the mail or wire communications was intended as the specific
22 or exclusive means of accomplishing the alleged fraud.

23 What must be proven beyond a reasonable doubt is that
24 defendant Vázquez-Botet knowingly devised or intended to devise a

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1 scheme to defraud that was substantially the same as the one
2 alleged in the indictment, and that the use of the mail or the use
3 of wire communications on or about the date alleged was closely
4 related to the scheme because defendant Vázquez-Botet either
5 received something in the mail or caused it to be mailed or made or
6 caused an interstate or foreign wire transfer to be made in an
7 attempt to execute or carry out the scheme.

8 To "cause" the mail to be used or a wire communication to be
9 made is to do an act with knowledge that the use of the mail or the
10 wires will follow in the ordinary course of business or where such
11 use can reasonably be foreseen.

12 **Counts Nine through Thirteen**

13 **Fraud Scheme to Deprive the Commonwealth of Puerto Rico of**
14 **Income Tax Payments in Violation of 18 U.S.C. §§ 1341,**
15 **1343, and 2 (Defendant Morell-Corrada)**

16 Counts Nine through Thirteen charge Defendant,

17 **[2] MARCOS MORELL-CORRADA,**

18 with engaging in a fraud scheme to deprive the Commonwealth of
19 Puerto Rico of income tax payments.

20 For you to find defendant Morell-Corrada guilty of this
21 scheme, you must be convinced that the government has proven each
22 of the following things beyond a reasonable doubt:

23 *First*, a scheme, substantially as charged in the indictment,
24 to deprive the Commonwealth of Puerto Rico of income tax payments

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1 and to deprive the Commonwealth of property in the form of income
2 tax payments and to obtain these tax payments instead for himself;

3 *Second*, the defendant Morell-Corrada's knowing and willful
4 participation in this scheme with the intent to defraud or to
5 obtain money or property by means of false or fraudulent
6 representations, pretenses or promises; and

7 *Third*, the use of the United States mails or the use of
8 interstate or foreign wire communications, on or about the dates
9 charged, in furtherance of this scheme.

10 A scheme includes any plan, pattern, or course of action. The
11 term "defraud" means to deprive another of something of value by
12 means of deception or cheating. A scheme to defraud is ordinarily
13 accompanied by a desire or purpose to bring about some gain or
14 benefit to oneself or some other person or by a desire or purpose
15 to cause some loss to some person. It includes a scheme to deprive
16 another of the intangible right of honest services.

17 The term "false or fraudulent pretenses" means any false
18 statements or assertions that concern a material aspect of the
19 matter in question, that were either known to be untrue when made
20 or made with reckless indifference to their truth and that were
21 made with the intent to defraud. They include actual, direct false
22 statements, as well as half-truths and the knowing concealment of
23 facts.

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1 A material fact or matter is one that has a natural tendency
2 to influence or be capable of influencing the decision maker to
3 whom it was addressed.

4 Defendant Morell-Corrada acted knowingly if he was conscious
5 and aware of his actions, realized what he was doing or what was
6 happening around him, and did not act because of ignorance, mistake
7 or accident.

8 An act or failure to act is willful if done voluntarily and
9 intentionally, and with the specific intent to do something the law
10 forbids, or with specific intent to fail to do something the law
11 requires to be done; that is to say, with bad purpose either to
12 disobey or to disregard the law.

13 Thus, if defendant Morell-Corrada acted in good faith, he
14 cannot be guilty of the crime. The burden to prove intent, as with
15 all other elements of the crime, rests with the government.

16 To act with an intent to defraud means to act willfully and
17 with the specific intent to deceive or cheat for the purpose of
18 either causing some financial loss to another or bringing about
19 some financial gain to oneself.

20 Intent or knowledge may not ordinarily be proven directly
21 because there is no way of directly scrutinizing the workings of
22 the human mind. In determining what defendant Morell-Corrada knew
23 or intended at a particular time, you may consider any statements
24 made or acts done or not done by him and all other facts and

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1 circumstances received in evidence that may aid in your
2 determination of his knowledge or intent. You may infer, but you
3 certainly are not required to infer, that a person intends the
4 natural and probable consequences of acts knowingly done or
5 knowingly omitted. It is entirely up to you, however, to decide
6 what facts are proven by the evidence received during this trial.

7 It is not necessary that the government prove all of the
8 details alleged in the indictment concerning the precise nature and
9 purpose of the scheme or that the material transmitted by mail or
10 wire communication was itself false or fraudulent or that the
11 alleged scheme actually succeeded in defrauding anyone or that the
12 use of the mail or wire communication was intended as the specific
13 or exclusive means of accomplishing the alleged fraud.

14 What must be proven beyond a reasonable doubt is that
15 defendant Morell-Corrada knowingly devised or intended to devise a
16 scheme to defraud that was substantially the same as the one
17 alleged in the indictment, and that the use of the mail or the use
18 of wire communications on or about the date alleged was closely
19 related to the scheme because defendant Morell-Corrada either
20 received something in the mail or caused it to be mailed or made or
21 caused an interstate or foreign wire transfer to be made in an
22 attempt to execute or carry out the scheme.

23 To "cause" the mail to be used or a wire communication to be
24 made is to do an act with knowledge that the use of the mail or the

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wires will follow in the ordinary course of business or where such use can reasonably be foreseen.

Count Fourteen

Obstruction of Justice, 18 U.S.C. § 1503(a)
(Defendant Morell-Corrada)

Count Fourteen charges Defendant,

[2] MARCOS MORELL-CORRADA,

with obstructing a federal grand jury investigation.

For you to find defendant Morell-Corrada guilty of this crime, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, there was a proceeding pending before a grand jury of this court;

Second, the defendant knew of the proceeding; and

Third, the defendant knowingly and corruptly endeavored to influence, obstruct or impede the due administration of justice in that grand jury proceeding.

To "endeavor" means to strive or to attempt to accomplish a goal or a result; and to endeavor to "influence, obstruct or impede" the due administration of justice means to take some action for the purpose of swaying or changing, or preventing or thwarting in some way any of the actions likely to be taken in the grand jury proceeding involved.

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1 To "act corruptly" means to act knowingly and dishonestly with
2 the specific intent to influence, obstruct, or impede the due
3 administration of justice.

4 While it must be proved that defendant Morell-Corrada
5 corruptly endeavored to influence, obstruct, or impede the due
6 administration of justice as charged, and that the natural and
7 probable effect of the defendant's actions would be to influence,
8 obstruct, or impede the due administration of justice, it is not
9 necessary for the government to prove that the grand jury
10 proceeding was in fact influenced or obstructed or impeded in any
11 way.

12 Willful Blindness

13 In deciding whether a defendant acted knowingly, you may infer
14 that defendant had knowledge of a fact if you find that he
15 deliberately closed his eyes to a fact that otherwise would have
16 been obvious to him. In order to infer knowledge, you must find
17 that two things have been established. First, that defendant was
18 aware of a high probability of the fact in question. Second, that
19 defendant consciously and deliberately avoided learning of that
20 fact. That is to say, defendant willfully made himself blind to
21 that fact. It is entirely up to you to determine whether he
22 deliberately closed his eyes to the fact and, if so, what
23 inference, if any, should be drawn. However, it is important to
24 bear in mind that mere negligence or mistake in failing to learn

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1 the fact is not sufficient. There must be a deliberate effort to
2 remain ignorant of the fact.

3 **Consideration of Punishment**

4 The punishment provided by law for the commission of the
5 crimes mentioned in the Indictment is for the court to decide. You
6 may not consider punishment in deciding whether the government has
7 proved its case against a defendant beyond a reasonable doubt.

8 **Duty to Deliberate**

9 When you retire, you should elect one member of the jury as
10 your foreperson. That person will preside over the deliberations
11 and speak for you here in court.

12 You will then discuss the case with your fellow jurors to
13 reach agreement if you can do so. Your verdict, whether guilty or
14 not guilty, must be unanimous.

15 Each of you must decide the case for yourself, but you should
16 do so only after you have considered all the evidence, discussed it
17 fully with the other jurors, and listened to the views of your
18 fellow jurors.

19 Do not be afraid to change your opinion if the discussion
20 persuades you that you should. But do not come to a decision
21 simply because other jurors think it is right.

22 It is important that you attempt to reach a unanimous verdict
23 but, of course, only if each of you can do so after having made
24 your own conscientious decision. Do not change an honest belief

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1 about the weight and effect of the evidence simply to reach a
2 verdict.

3 **Consideration of Evidence**

4 Your verdict must be based solely on the evidence and on the
5 law as I have given it to you in these instructions. However,
6 nothing that I have said or done is intended to suggest what your
7 verdict should be -- that is entirely for you to decide.

8 **Return of Verdict**

9 After you have reached unanimous agreement on a verdict, your
10 foreperson will fill in the form that has been given to you, sign
11 and date it, and advise the marshal outside your door that you are
12 ready to return to the courtroom.

13 **Communication With Court**

14 If it becomes necessary during your deliberations to
15 communicate with me, you may send a note through the jury officer,
16 signed by your foreperson or by one or more members of the jury.
17 No member of the jury should ever attempt to communicate with me on
18 anything concerning the case except by a signed writing, and I will
19 communicate with any member of the jury on anything concerning the
20 case only in writing, or orally here in open court. If you send
21 out a question, I will consult with the parties as promptly as
22 possible before answering it, which may take some time. You may
23 continue with your deliberations while waiting for the answer to
24 any question. Remember that you are not to tell anyone -- including

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1 me -- how the jury stands, numerically or otherwise, until after
2 you have reached a unanimous verdict or have been discharged.

3 San Juan, Puerto Rico, this 1st day of November, 2006.

4 S/José Antonio Fusté
5 JOSE ANTONIO FUSTE
6 Chief U. S. District Judge